plied it. *Niehaus* v. *Shepherd*, 26 Oh. St. 40; *Foster* v. *Wright*, *supra*. But if in the principal case the shifting of the inlet was perceptible moment by moment, the decision is correct. *Mulry* v. *Norton*, 100 N. Y. 424. See BRACTON, 2. 2. 1.

BANKRUPTCY — JURISDICTION OF FEDERAL COURTS — SUMMARY PROCEDURE. — Just before the filing of a petition in bankruptcy the treasurer of the bankrupt corporation took money of the corporation and left the jurisdiction of the bankruptcy court. He returned a year later. The referee found that he had a part of the money still in his possession, though he denied this. *Held*, that the bankruptcy court may make a summary order that he turn over this money to the trustee. *In re Meier*, 27 Am. B. Rep. 272 (C. C. A., Eighth Circ.).

The Bankruptcy Act allows summary procedure to compel a bankrupt to turn over to his trustee property in his possession. BANKRUPTCY ACT OF 1898, § 2 (7), (13). It was a slight extension to allow such procedure against an agent of the bankrupt. *Mueller* v. *Nugent*, 184 U. S. 1. See *In re Wells*, 114 Fed. 222. But the federal cases, following the *dictum* of the Supreme Court in the case cited, have gone to this extent: In the case of any fraudulent conveyance or preference the trustee may petition for a summary order against the party benefited. The petition should allege that the defendant has but a colorable claim. *In re Scherber*, 131 Fed. 121; *In re Michie*, 116 Fed. 749. If the referee finds that the defendant has the property in his possession and has no substantial claim to it, he may order it to be handed over. *In re Kane*, 131 Fed. 386. *Cf. In re Laplane Condensed Milk Co.*, 145 Fed. 1013. The present case is within this rule. But if the defendant sets up a claim of title to the property and supports it by some evidence, there can be no summary order, even though the referee is convinced that the claim is fraudulent. *Jaquith* v. *Rowley*, 188 U. S. 620; *Cooney* v. *Collins*, 176 Fed. 189. But see *In re Knickerbocker*, 121 Fed. 1004, 1006. The rule even so limited is without statutory foundation, and must be regarded as judicial legislation.

BANKRUPTCY — PARTNERSHIP AND INDIVIDUAL CLAIMS AND ASSETS — ENTITY THEORY. — A partnership and the partners were in bankruptcy. The partnership estate proved against the individual estate of a partner on a note. *Held*, that no dividend can be paid on this claim till all the individual creditors of that partner have been paid. *In re Telfer*, 184 Fed. 224 (C. C. A., Sixth Circ.).

A partnership and the partners were in bankruptcy. The estate of a partner proved against the partnership estate for money lent. *Held*, that no dividend can be paid on this claim till all the creditors of the partnership have been paid. *In re Effinger*, 184 Fed. 728 (Dist. Ct., D. Ind.).

These cases are in accord with previous authority in their construction of the provisions of the Bankruptcy Act regarding the administration of the estates of bankrupt partnerships. *In re Rice*, 164 Fed. 509. See *In re Denning*, 114 Fed. 219, 221; *In re Henderson*, 142 Fed. 588, 590. They decide that § 5 *f*, stating the old rule, giving partnership assets to partnership creditors, individual assets to individual creditors, and any surplus from either estate to the creditors of the other, governs the distribution, and that § 5 *g* allowing the partnership and individual estates to prove against each other, merely explains a method for distributing the surplus. The result is thus the same as that reached under the Act of 1867, which had no section corresponding to § 5 *g* of the present act. See *Amswick* v. *Bean*, 22 Wall. (U. S.) 395, 402. The Act of 1898 adopts in a general way the entity theory of partnership. BANKRUPTCY ACT OF 1898, §§ 1 (19), 5 *a*. See *In re Bertenshaw*, 157 Fed. 363, 365. The federal courts might have carried out the theory more logically by giving § 5 *g* the effect of making the individual and partnership estates creditors of each other,

and allowing them dividends as ordinary creditors under § 5 *f*, and not merely allowing them the surplus. But state courts which affirm that a partnership is an entity refuse to allow suits at law between a firm and its partners. *Kalamazoo Trust Co.* v. *Merrill*, 159 Mich. 649. See *Robertson* v. *Corsett*, 39 Mich. 777, 784.

BILLS AND NOTES — DEFENSES — EXCUSE FOR FAILURE TO GIVE NOTICE OF DISHONOR. — The defendants' testator, a director of a company, became an anomalous indorser on two of the company's notes, payable on demand to the plaintiff. To secure the anomalous indorsers a deed of trust to a third person of all the company's property was executed. Without any prior demand on the company, the plaintiff sued the director's estate on these notes. *Held*, that he may recover. *In re Alldred's Estate* (*No. 1*), 79 Atl. 141 (Pa.). See NOTES, p. 665.

BILLS AND NOTES — DOCTRINE OF PRICE *v.* NEAL — RECOVERY OF PAYMENT BY DRAWEE ON FORGED BILL. — The plaintiff bank paid a forged check drawn on it, to the defendant, a holder in due course. The defendant did not change his position. *Held*, that the plaintiff may recover the payment. *American Express Co.* v. *State National Bank*, 113 Pac. 711 (Okl.).

The great weight of authority denies recovery in such a case. *Price* v. *Neal*, 3 Burr. 1354; *National Park Bank* v. *Ninth National Bank*, 46 N. Y. 77. This court applied the doctrine that a recovery may be allowed of money paid through a mistake of fact. But that equitable doctrine ought not to apply unless some reason exists for equitable interference. See 4 HARV. L. REV. 279, 299. Since both parties here are innocent and each has given value on the faith of the signature, to allow recovery merely shifts the burden to a person who has an equal equity with the plaintiff. The rule of *Price* v. *Neal* follows accurately the doctrine of mistake of fact, and furthermore increases the security of holders in due course.

BILLS AND NOTES — PURCHASERS FOR VALUE WITHOUT NOTICE — KNOWLEDGE AT TIME OF BRINGING SUIT OF EQUITABLE DEFENSE. — A bank, the holder in due course of a note, learned of fraud and failure of consideration between the original parties. At maturity, it had in its hands sufficient general deposits of the payee-indorser to pay the note. But the bank sued the maker. *Held*, that it cannot recover. *Union National Bank* v. *Menefee*, 134 S. W. 822 (Tex., Ct. Civ. App.). See NOTES, p. 665.

CARRIERS — DISCRIMINATION AND OVERCHARGE — CARLOAD RATES TO FORWARDING AGENTS. — A railroad had lower rates for carload lots than for less than carload lots, and made a rule denying the advantages of this to forwarding agents who had been combining small shipments into carload lots and shipping at the lower rate. The Interstate Commerce Commission decided that this rule was unjust and discriminatory. *Held*, that its decision is correct. *Interstate Commerce Commission* v. *Delaware, Lackawanna & Western R. Co.*, 31 Sup. Ct. Rep. 392.

The Supreme Court rests its decision on the ground that a common carrier has no right to make the ownership of goods the criterion by which its charge for carriage shall be measured. This is a necessary corollary of the rule that rates must depend upon the cost of service, and is in itself unanswerable. But it leaves a serious part of the problem untouched. If forwarding agents can be regarded as dealers in transportation they are competitors of the railroads, and it would seem unfair that they should take advantage of the railroads' carload rates to gain for themselves their less than carload business. *Johnson* v. *Dominion Express Co.*, 28 Ont. 203; *Lindquist* v. *Grand Trunk Western Ry.*